

**Agenda Item Summary**

14-0831

BOC Meeting Date
10/15/2014**Requesting Agency**

Water Resources

Commission Districts Affected

1, 2, 3,

Requested Action *(Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)*

Request approval of Easement Agreement with The Highlands Homeowner's Association for the operation and maintenance of the County owned water distribution system.

Requirement for Board Action *(Cite specific Board policy, statute or code requirement)*

In accordance with O.C.G.A. 36.10.1, all contracts entered into by the County Government Authority shall be in writing and entered on its minutes.

Is this Item Goal Related? *(If yes, describe how this action meets the specific Board Focus Area or Goal)*

No

Is this a purchasing item?

No

Summary & Background*(First sentence includes Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)*

Fulton County owns and operates a potable water distribution system in north Fulton County. Many developments and/or subdivision are desirous of being private and gated but having Fulton County provide water service within their private roadway areas. As it is advantageous for Fulton County to provide ongoing maintenance of the necessary infrastructure to protect the health and welfare of the public, the Department of Water Resources has developed an agreement whereby the Homeowner's Association grants easements to provide for said ongoing maintenance. The water system was dedicated and accepted to Fulton County by Agenda Item 10-0958. The roadways have since been privatized; leaving Fulton County without legal access to operate and maintain the system. The easement agreement provides that legal authority. The easement agreement further details the obligations of Fulton County and the Highlands HOA regarding restoration requirements created by repairs to the system.

Contract & Compliance Information*(Provide Contractor and Subcontractor details.)*

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Revised 03/12/09 (Previous versions are obsolete)

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Revised 03/12/09 (Previous versions are obsolete)

Solicitation Information	NON-MFBE	MBE	FBE	TOTAL
No. Bid Notices Sent:				
No. Bids Received:				
Total Contract Value	.			
Total M/FBE Values	.			
Total Prime Value	.			
Fiscal Impact / Funding Source	(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)			
.				
Exhibits Attached	(Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)			
Source of Additional Information	(Type Name, Title, Agency and Phone)			

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Procurement**Contract Attached:**

.

Previous Contracts:

.

Solicitation Number:

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Submitting Agency:

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Staff Contact:

.

Contact Phone:

.

Description:.**FINANCIAL SUMMARY****Total Contract Value:**

Original Approved Amount: .

Previous Adjustments: .

This Request: .

TOTAL: .

MBE/FBE Participation:

Amount: . %: .

Amount: . %: .

Amount: . %: .

Amount: . %: .

Grant Information Summary:

Amount Requested: .

☐

Cash

Match Required: .

☐

In-Kind

Start Date: .

☐

Approval to Award

End Date: .

☐

Apply & Accept

Match Account \$: .

Funding Line 1:

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Funding Line 2:

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Funding Line 3:

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Funding Line 4:

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KEY CONTRACT TERMS**Start Date:**

.

End Date:

.

Cost Adjustment:

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Renewal/Extension Terms:

.

ROUTING & APPROVALS

(Do not edit below this line)

X	Originating Department:	Suwanarpa, Kun	Date: 10/3/2014
.	County Attorney:	.	Date: .
.	Purchasing/Contract Compliance:	.	Date: .
.	Finance/Budget Analyst/Grants Admin:	.	Date: .
.	Grants Management:	.	Date: .
X	County Manager:	O'Connor, Patrick	Date: 10/9/2014

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Fulton County Land Division
141 Pryor Street, Ste. 8021
Atlanta, Georgia 30303

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

THIS DOCUMENT MUST ONLY BE RECORDED BY PERSONNEL OF THE FULTON COUNTY LAND DIVISION

EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("**Agreement**") is entered into effective as of the 2
day of Oct, 2014, by and between the **HIGHLANDS HOMEOWNERS ASSOCIATION,**
INC., a Georgia non-profit corporation (the "**Grantor**") and **FULTON COUNTY**, a political
subdivision of the State of Georgia (the "**Grantee**").

WITNESSETH:

WHEREAS, Grantee obtained ownership of the water system within and serving The Highlands subdivision through an agreement titled TRANSFER OF OWNERSHIP FROM PRITCHARD MOUNTAIN WATER, LLC OF WATER EXTENSION LINES, MAINS AND FACILITIES TO FULTON COUNTY effective October 6, 2010; and,

WHEREAS, Grantee's ability to operate and maintain said water system was effected through the existence of public rights-of-way ("ROWs") for roadways within the subdivision; and

WHEREAS, the developer, Harmony Reserve Investments, LLC, made an application to the City of Milton to abandon the public ROWs within the Highlands subdivision; and

WHEREAS, the City of Milton did abandon the public ROWs within the Highlands subdivision effective July 16, 2012, which was evidenced by that certain Deed of Abandonment dated September 17, 2012, and recorded in the records of Fulton County, Georgia in Deed Book 51963, Page 58; and,

WHEREAS, there are existing water lines owned and operated by Grantee located in the previously public ROWs; and

WHEREAS, due to the abandonment of the previously public ROWs by the City of Milton, Grantee requires an easement to operate and maintain the water lines located in the previously public ROWs; and

WHEREAS, Grantor and Grantee are entering this Agreement for the purpose of conveying to Grantee an easement to use, maintain, repair, replace, relocate and remove water lines and associated facilities located in the previously public ROWs.

NOW THEREFORE, in consideration of Ten Dollars and 00/100 (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The recitals set forth above in this Agreement are incorporated into the body of this Agreement and made a part hereof as if fully set forth herein.

2. **Grant of Easement.** Grantor does hereby grant, bargain, sell, and convey to Grantee and to Grantee's successors and assigns a perpetual non-exclusive easement to access, use, maintain, repair, replace, relocate and remove underground water lines and associated facilities in the ROW (the "**Easement**"). The Easement shall lie across all that tract or parcel of land lying and being in Land Lots 191, 192 and 193 of the 2nd District and 2nd Section of Fulton County, Georgia being more particularly described in **Exhibit "A,"** attached hereto and incorporated herein by this reference. The Easement shall be centered on the roadways and extend a minimum of 44 feet in total width or a minimum of 10 feet beyond the back of the curb defining the roadway, whichever is greater. The named private roadways included in the Easement are: Heritage Pass, Legends Trail, Shadow Hawk and Timber Place. Grantee's right to access the Easement shall include methods for gaining entry through any locked gates or fencing for the purpose of handling emergency repairs 24 hours a day, 7 days a week.

3. **Reservation of Rights.** Grantor reserves the right to use the Easement for any and all lawful purposes, except that such use may not unreasonably interfere with the exercise by Grantee of its rights in the Easement granted hereby. Without limiting the generality of the foregoing, (i) Grantor may grant and establish other easements in all or any part of the Easement, so long as the grant is lawful and does not materially interfere with the rights hereby granted to Grantee, and (ii) Grantor may construct within the Easement, streets, roads, parking lots, sidewalks, fences, landscaping, signage, lighting, and other architectural or entry features that may be used in conjunction with the development or use of the Association's land, of which the Easement forms a part, however, such improvements may not cause damage to the water lines and associated facilities within the Easement. Grantee shall use its best efforts not to interfere with or negatively impact the quiet enjoyment of Grantor's members in the exercise by Grantee of its rights pursuant to this Agreement. During periods of maintenance and repair, Grantee shall endeavor to provide reasonable access for Grantor and Grantor's members and invitees across the Easement.

4. **Obligation to Repair.** Grantee hereby covenants and agrees that it shall, at Grantee's cost and expense, be responsible for and carry out any and all maintenance or repair to the Easement necessitated or caused by the use of the Easement by Grantee, its agents,

contractors and employees for the specific purpose defined in this Agreement. After any exercise of Grantee's rights under this Agreement, Grantee shall, at its expense, promptly restore the Easement to as near to its original condition as is feasible with the exceptions as noted below. Sod or seeded lawns and landscaping shall be graded, smoothed, and re-sodded or re-seeded, whichever is appropriate. Any trees, shrubbery and flower beds located within the Easement which are damaged during repair or maintenance efforts shall be the responsibility of the Association or other entity having responsibility for the maintenance of the Easement area. Only driveways, sidewalks, using standard poured (ready Mix) concrete (with the exception of streets) shall be repaved to their original dimensions. Streets shall be repaved according to Fulton County Street Standards. Any additional repairs to streets above and beyond the requirements of the Fulton County Street Standards shall be the responsibility of Grantor. Decorative stone walls, sidewalks, driveways and other roadway surfaces damaged by repair and maintenance efforts will be filled with crushed stone and/or temporarily covered with steel plates. Permanent repairs to the decorative stone walls, sidewalks and driveways shall be made by Grantor, or other entity having maintenance responsibilities for the Easement. Repairs and restoration will only be made to those areas immediately affected by the maintenance effort with the exception of concrete driveways, which may be re-poured in entire sections, depending on the extent of the affected area, manner and method of the concrete removal (i.e. sawcut with no damage to surrounding concrete), or condition of concrete prior to the repair or maintenance effort. Maintenance responsibility by Grantee for individual water service lines shall extend only to the water meter. Responsibility for any maintenance beyond the meter will be borne by the individuals being served. Any work performed by Grantee pursuant to this Agreement shall be done in a good workmanlike manner.

5. **Notices.** All notices and communications required or permitted hereunder shall be in writing. Any notices or demands shall be deemed to have been duly and sufficiently given if a copy thereof has been personally served, forwarded by expedited messenger or recognized overnight courier service with evidence of delivery or mailed by United States registered or certified mail in an envelope properly stamped and addressed to the applicable party at the addresses identified below or at such other address as the such party may theretofore have furnished to the other party by written notice. The effective date of such notice shall be the date of actual delivery, except that if delivery is refused, the effective date of notice shall be the date delivery is refused. Notices shall be addressed as follows:

Grantor:

Highlands HOA, Inc
Milton, Georgia _____

Attn: President

Grantee:

Kun Suwanarpa

Assistant Director, Water Resources

141 Pryor St., S.W., Ste. 6001

Atlanta, Georgia 30303

Field Stone Assn. Mgmt
2675 Paces Ferry Rd Ste 125
Atlanta, GA 30339

6. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

7. **Severability.** If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

8. **Effective Date.** This Agreement will become effective upon approval by the Fulton County Board of Commissioners of their interest in the Easement and will be recorded by Grantee as soon as practicable after such approval and execution by Grantee.

9. **Third Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties.

10. **Waiver.** Nothing in this Agreement shall be construed as a waiver of sovereign immunity.

11. **Miscellaneous.** This Agreement may not be modified orally or in any manner other than by a written agreement signed by the parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns. Time is of the essence in this Agreement. This Agreement shall be governed by the laws of the State of Georgia without regard to the conflict of laws provisions thereof.

[Signatures appear on the following page]

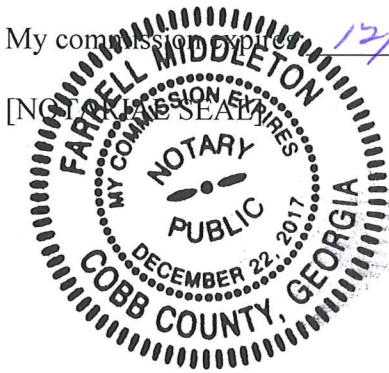
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

My commission expires 12/23/17



GRANTOR

HIGHLANDS HOMEOWNERS' ASSOCIATION, INC., a Georgia non-profit corporation

By: [Signature]
Name: DARCI DANIGREN
Title: Sec.

GRANTEE

FULTON COUNTY, GEORGIA

ATTEST:

Mark Massey
Clerk [Seal]

John H. Eaves, Chairman
Board of Commissioners

APPROVED AS TO CONTENT:

Kun Suwanarpa
Assistant Director, Water Resources

APPROVED AS TO FORM:

Office of the County Attorney

Exhibit A

All right of way for the roads within The Highlands at Echelon Subdivision, Phase One and Phase Two, such road right of way being named as Timber Pass, Heritage Pass, Legends Trail and Shadow Hawk (the "Roads"), which is situation in Land Lots 191, 192 and 193 of the 2nd District, 2nd Section of Fulton County, Georgia.

These rights of way being shown on The Highlands at Echelon, Phase One and Phase Two, subdivision plats prepared by LCE Engineers, Inc. dated 8/21/2007 and recorded in the records of Fulton County, Georgia in Plat Book 331, Pages 137-143 (Phase One) and 133-136 (Phase Two).